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LAW REPORTS*

VII. English Reports.

In 1736 was published a folio volume in three parts of the work now known as Chancery Reports. The three parts had been in earlier editions published separately and at different times. The first consists of mere extracts from Registrar's books and has no pretension to be called a report. The last part contains some well-reported judgments of Lord Cowper. These reports cover a very long period (1615-1712). As Lord Clarendon who became Chancellor on the Restoration was not a lawyer, he used to call in the assistance of Judges to decide cases. This fact is noted in the title page of the first two parts. The practice was continued by some of his successors also though themselves lawyers For example we have already noticed the instance of Bridgeman calling in the assistance of the Chief Justices and the Chief Baron.

Freeman's Reports contain some cases in Equity decided during this period and Reports Tempore Finch contain a selection of cases decided by Lord Nottingham from 1673 to 1680 in which the reporter is said to have appeared as counsel. These reports are wholly unsatisfactory, defective in the statement of facts, in the notes of argument and in giving the judgment. The reasons for the judgment are hardly ever given. Equity cases abridged correspond in Equity to the abridgments of Viner and Rolle at Common Law and contain like them copious references to original manuscripts.

Vernon was one of the most eminent lawyers of his time, his disapproval of a case being considered sufficient to discard it altogether. His manuscripts were the subject of a Chancery

*The Seventh Series of Lectures arranged by the University of Madras, delivered by Mr. B. Sitarama Rao Esq., Vakil, High Court.

action. As originally published the reports (1689-1723) contained many inaccuracies but improved in later editions. But the reports give hardly any indication of—either the lucidity of expression or the learning of the Judges whose judgments are reported—Nottingham, Somers and Cowper.

Precedents in Chancery also dealing with the same period possess considerable authority (7 Mod. 304; 5 Ves. 664, Willes 214). But Pere Williams (1695-1736) reports are about the most perspicuous, useful and interesting series of Chancery reports of this period and Cox's notes have made them more useful still. Lord Kenyon recommended Pere Williams to a young man who applied to him for advice as to a professional course of reading. They were published by the son of the reporter after the latter's death. The reporter is very fortunate in his Judges who are all very eminent men.

Guilbert's reports are not regarded as reports of authority. The Reports known as *Select Cases* contain decisions of Chancellor King (1724-1734). Moseley's reports (1726-1731) went in for some censure from Lord Mansfield, but Lord Eldon pronounced them to possess a very considerable degree of accuracy (Mer. 92: 19 Ves. 488 N). Second of W. Kelyng deal with the period 1731-1736 and are sometimes cited as Reports Tempore Hardwicke.

Cases Tempore Talbot report judgments of Chancellor Talbot (1734-1738). Some decisions of Talbot are also found in Pere Williams. Though they do not give a glimpse of the reputed eloquence of Talbot they undoubtedly show a strong grasp of facts, a thorough acquaintance with legal principles and an eminently clear and logical exposition. The judgments are invariably accompanied by a clear statement of facts.

West's Hardwicke (1736-1740) was published from the original manuscripts of Lord Hardwicke and for that reason, possesses a higher degree of authority than other reports purporting to report that great Judge's decisions.

Atkyns (1736-1755) is described by Chief Justice Best as being more accurate than Vesey, by no means a great compliment. The style of reporting of both these with Ambler is jejune in the extreme. They give little by way of statement of facts or arguments and the statements when given, are also far from lucid. Sometimes the decree even is wrongly given.

Ambler's reports cover nearly fifty years (1737-1783) and give a more or less imperfect account of the judgments of Hardwicke, Nottingham, Clarendon and others. In these also the statement of facts, is very meagre and the language of Judges is sometimes so imperfectly reported as to give a false impression even as to the points decided. Barnardistone, Bridgeway and Kenyon also give us some equity cases. Vesey senior gives us Chancery cases from 1747 to 1756. Eden's reports give us cases from 1757 to 1767 of Lord Nottingham among others. Cox's Chancery cases from 1780 to 1796 have a few judgments of earlier date of Lords Nottingham and Hardwicke.

Lord Eldon's judgments will be found in thirteen volumes of Vesey junior, in Beams, Cowper, Merivale, Swanston Jacob and Walker, Turner and Russel Rose, Buck Glyn, Jameson, Dow and Bligh. Vesey junior claims in his preface to have introduced the practice of noting the points decided in the case in the margin at the top and the dicta as they appear to mark them off as dicta.

Swanston's reports are among the best of Chancery reports. The reporter gives a full statement of facts with an outline of the pleadings and the substance of the arguments with the authorities cited "The principal object of attention" he says "has been to represent exactly the train of reasoning by which the Court arrived at a conclusion and to connect the facts of the case with the general doctrine of the law." Many of the cases contain valuable notes by the author who was an accomplished lawyer.

To those accustomed to see all judgments in print as soon as they are delivered, it must appear strange that none of Lord Hardwicke's judgments which so to say made the Equity law was printed till after he ceased to be Lord Chancellor. The first volume of Atkyns did not come out till 1757, nor the second till 1767 and the first edition of Vesy senior was published in 1779 whereas Lord Hardwicke was Lord Chancellor from 1737 to 1756. The newspapers and magazines of that day thought as little of the Court of Chancery as of the country of Peking.

Lord Clarendon was the first Chancellor after the Restoration. His uncle Sir Nicholas Hyde, C. J., had tried his best to make a lawyer of him, but having never paid any serious attention to it, he never became one. Nevertheless he seems to have discharged his judicial duties to the satisfac-

tion of the public. In the Chancery, he had the assistance of the assessors, viz., the Judges and masters of Equity, and so far as the House of Lords was concerned it had not yet regained its position as the highest appellate tribunal.

After Clarendon's resignation Bridgeman was appointed Keeper of the Great Seal pending the appointment of a Lord Chancellor. The reports of his judgments are to be found in Cases in Chancery, Part I and Modern Reports, Vol. I. The points to be found there are of small importance. He was a very good Common Law Judge but was a poor Equity lawyer. It is said of him that "he laboured very much to please everybody and that if a case had several points he would never decide all on one side but would decide some points for one, some for the others seeing that each party had a fair share." He fell as he failed to respond to the importunities of the King to grant an injunction against execution on the ground that the defendant was unable to pay owing to the shutting up of the Exchequer where his money was locked (Reports in Chancery I, p. 24).

Then Shaftesbury became Chancellor. He had absolutely no qualifications to the office but he had such a high opinion of his own ability that he wanted to teach the Chancery Bar and the officers that he could do without their forms. He slighted the Bar. He would take his own line notwithstanding agreement among the practitioners. They soon found his humour and let him have his caprice but afterwards upon notice, moved him to discharge his orders, showing to his face that what he did was against common sense and justice. A constant repetition of this process taught him wisdom and he became thereafter a tame Judge. A few of his decisions are found in the Reports in Chancery but they decide no point of importance.

He was succeeded by Lord Nottingham in 1673. He is known as the "father of Equity." His great ambition was to reduce Equity to a system. He had knowledge not only of English law but also of the Civil law. He has the misfortune to be very inadequately reported. His judgments are to be found in reports Tempore Finch. But all that we get there is "The Court ordered. The Court directed. The Court allowed." The other reports where they are found are the Reports of cases adjudged in Chancery from 20th of Charles to 1st of William and Mary and cases argued from 12 Charles II to 31st. Some decisions are found reported in Reports in Chan-

cery, Modern Reports, Dickens' Reports, Vernon, Nelson and Freeman. They are of little value. The only reports that give some idea of his great judicial powers are Swanston's reports where some of his judgments are published as an appendix. His merit lay not in establishing new doctrines or rules but in the scientific method he pursued. He wanted to redeem Equity from the imputation of caprice. With this object, he put a strict limit to implied trusts. "A general rule" he said "to which there is no exception is this; the law never implies and the Court never presumes a trust but in a case of absolute necessity. The reason of the rule is sacred: for if the Chancery once took liberty to construe a trust by implication of law unnecessarily a way is opened to the Lord Chancellor, to construe or presume any man in England out of his estate and so at last every case in Court will become a *casus pro amico.*" Another rule laid down by him was not to interfere with contracts in the absence of fraud. The leading case on the doctrine of purchaser for value without notice is his—*Basseti v. Norworthy,* Rep. Finch 102. He is found fault with for too much indulgence to counsel. He would hear 5 or 6 counsel even on the same side. He was Lord Chancellor for nine years till 1682, when North who was Chief Justice of the Common Pleas became Lord Keeper. As Chief Justice of the Common Pleas, North is famous for having regained work for that Court which it had been deprived of by the Bill of Middlesex, by the dexterous use of the writ of *capias* applying it to all actions—of course, not from any motives of public service but with a view to add to his emoluments which depended then and for a long time after on the fees realised in cases. He was Chief Justice of the Common Pleas from 1674 to 1682. His only merit consists in his proclaimed good intentions and not in the carrying out of them. He declared that he was going to stop the sale of the office of master of Chancery but after full consideration and out of deference to precedent, like a good lawyer, he continued the old practice. As a Judge he seems to have been fairly satisfactory but no great decisions stand to his credit.

The Chancellors that came after him till we come to Lord Somers who held that office from 1693 to 1699 were worthless and need not be considered. Somers introduced and established the principles and doctrines of Civil Law on the subject of legacies, trusts, charities, and all other topics of law where they could appropriately be held applicable. From his time

reference to civil law became fashionable. He drew the principle from the Roman Law all the while calling it the doctrine of the Court. His judgments will be found in Vernon and Pere Williams.

The next Chancellor or rather Lord Keeper of respectable authority is Lord Cowper. His judgments are found reported in Vernon (Vol. II) Pere Williams Vol. I, Precedents in Chancery Vol. III and Reports in Chancery. In his case also the reporters do not do him full justice, substituting as they do their own quaint and ungrammatical language for his beautiful English. He is not a profound jurist. It is curious that at that time parol declarations of the testator as to his intention used to be admitted in evidence (2 Vern. 252, 517, 601, 736.) He decided that famous case of *Onions* v. *Tyer* dealing with the revocation of Wills (2 Vern. 741), that is to say laying down that a will defectively executed could not revoke a validly executed will. "To hang a man first and to try him afterwards "was a charge made against him by a prisoner who was being tried by him (15 St. Tr. 847) when an application for adjournment made by him was rejected.

The next Chancellor was Lord Macclesfield. He was Chief Justice of the Queen's Bench before he became Lord Chancellor. Chief Justice Parker was eminent as a Judge, though not considered the equal of Lord Holt. By his acting on the principle on which Lord Lyndhurst is said to have subsequently acted "to render it disagreeable to counsel to talk nonsense" he was sometimes discourteous to the Bar. He became Chancellor in 1718. He had to resign in 1725. He was charged with selling offices in Chancery and conniving at the purchasers using the money of wards and was convicted. The practice was, however, a long standing one and he was only made a scape goat. It is said of him that he was partial to some counsel that appeared before him and discourteous to others. His judgments are found in the first and second volumes of Pere Williams, who is an accurate and skilful reporter but unfortunately is too succinct in stating the ratio decidendi. The reporter hardly does justice to the methodical arrangement and the nervous language for which Lord Macclesfield was celebrated. As a Judge he was a consummate master of principles. He held that a child enventre sa mere was as good as a child born but he would not extend this rule for the benefit of illegitimate children similar-

ly situated. He laid down for the first time the rule that in a devise over of personal property if there should be a failure of descendants the point of time contemplated was the death of the testator. In *Eyre* v. *Shaftesbury* he laid down the law as to the jurisdiction of the Court of Chancery over infants even during the life time of parents and also the other rule that when joint guardians are appointed on the death of one the guardianship survivers to the others. In 2 P. W. 169 *Decosta* v. *Scandaret* he laid down the rule that non-disclosure of a material circumstance by the insurer vitiated a policy of insurance. Lord King succeeded Macclesfield after an interregnum when the Great Seal was in Commission. For eleven years he was Chief Justice of the Common Pleas where he was in his element and fully equipped with the rules of pleading but no more. But he set himself to study the precedents as best as he could and made a fair Equity Judge. His judgments will be found in Pere Williams. The leading case of *Keech* v. *Sandford* on constructive trusts was decided by Lord King. He also laid down the rule that lispendens is tantamount to notice in *Sowell* v. *Carpenter*, 2 P. W. 482. It was during his regime that English was made the language of pleadings. He was Chancellor for eight years. He had a most competent Equity Judge to assist him as Master of the Rolls—Sir Joseph Jekyl. Talbot the next Chancellor was a leader of the Equity Bar and fully equipped for the place and had the best account of all the Chancellors up to that time. Some of his decisions are to be found in Pere William but they are to be found mostly in Forrester's cases Tempore Talbot. The reporter possessed little skill in composition (though he had his fair share of legal knowledge) and so makes a bad reporter.

Next we come to a Chancellor who is universally considered the most consummate Judge who ever sat in the Court of Chancery—distinguished not only for rapid and satisfactory decision but also for the profound and enlightened principles he laid down and for perfecting the English Equity into a symmetrical science. Before he became Chancellor, he was as he said before, Lord Chief Justice. Except Lee who subsequently became Chief Justice the rest were quite inferior men and to shut their mouths, he frequently reserved judgment and delivered written judgments. He combined both the learning of the English lawyer and of civil law, the Pandects and the

digest. Learned as he was, he would listen to arguments, and unlike some Judges of great ability he appears to have frequently changed his opinion upon full argument. Lord Hardwicke's judgments are praised for the luminous method in the arrangement of topics and elegant perpetuity of language in the discussion of them. One thing more than any other which strikes the reader of his judgments is—that he fully saw and appreciated the arguments against his position and often re-stated them with additional force and clearness, refuting them with the greatest cogency and lucidity. Unlike Lord Eldon, he did not decide each case upon its specialities leaving the profession entirely at a loss with respect to the general principle which had been discussed. Nor did he wrest the peculiar circumstances of the case to make it conform to his canon. He never resorted to forced interpretations or false analogies and he was always anxious to support his opinion by legal precedents—in the selection and application of which he was particularly happy. His judgments are reported by Atkins, Vesey Senior, Strange, Ambler, Barnardiston, Rideway and West. Many leading cases in Equity are his—*Penn* v. *Baltimore,* where it was decided that equity acts *in personam* and will enforce specific performance of contracts relating to foreign land, *Chesterfield* v. *Janssen,* where he propounds the rules regarding the interference of equity in cases of fraud, *Row* v. *Dawson* (1 Ves. Sen. 331) as to assignment of choses in action and numerous other cases as to administration of estates where he with Nottingham has the credit of introducing the principle of "equality" into "equity." His position in Equity corresponds to that of Lord Mansfield in Common Law.

The successor of Hardwicke was Northington. As his reputation was not high, he is very scantily reported—the only reporters being Eden and Ambler who have given him but slight consideration. His best performances are *Marlborough* v. *Godolphin* about perpetuities. He was spoken of highly by Lord Eldon.

He was succeeded by Lord Camden who was Lord Chief Justice of Common Pleas before he became Chancellor. As Chief Justice Pratt he had to do with the trial of John Wilkes. He was most unfortunate in his reporters. Not infrequently his reporter, after a brief statement of the arguments of Counsel thus deals with a judgment on which the Judge had bestowed infinite pains : " And Lord Camden

being of the same opinion which he delivered at large, the bill was dismissed." Both as Equity and Common Law Judge his authority is high.

Charles Yorke, the second son of Lord Hardwicke, died within three days of his appointment as Lord Chancellor and was succeeded by Lord Bathurst with absolutely no qualification. He managed to get through the business by relying on the Master of the Rolls and in difficult cases calling in the aid of the Common Law Judges. In the House of Lords he relied upon Lord Mansfield.

The next was Lord Thurlow. He was Chancellor for 13 years from 1778 to 1791. He is handed down to posterity through Brown, Vesey Junior and Dickens. He does not appear to much advantage in those reports partly their fault it may be —especially in contrast to his Master of the Rolls—Grant or Arden. He seems to have called in Hargrave, a learned lawyer, to assist him in preparing judgments. Where Hargrave appeared himself he got matter for judgment from his written arguments. In the House of Lords he used to summon the Common Law Judges to his aid.

Lord Loughborough was Chancellor from 1793 to 1801. He is famous for his argument as Counsel in the *Duchess of Kingston's case.* He was Chief Justice of the Common Pleas for some years before he became Lord Chancellor. His judgments as Chief Justice of Common Pleas are to be found in the two Blackstones. But there is a gap of eight years during which period there is no report of the decisions in the Common Pleas—fortunately for him—as Lord Campbell adds because he thinks poorly of his attainments as a lawyer and his performances as a Judge. But he took part in one or two important cases. *Steel* v. *Houghton* was one of them. The point in it was as to whether the poor of a parish have a legal right to glean in a common field after the reapers in harvest time. Mr. Justice Gould was for the right in support of which he cited among other things, the Leviticus. The Chief Justice, if fond of popularity, might have decided in support of it, but he decided against the right, brushing aside the Leviticus as an appeal to charity. His most elaborate judgment at Common Law was in *Lickbarrow* v. *Mason* (1 Henry Blackstone 51) though his judgment was reversed. Those were days of barbarous punishments. Lord Loughborough was mild comparatively. Buller, for instance, used to hang for sheep stealing avowing as a reason that his own

sheep were stolen. Mr. Justice Heath acting on principle used to hang in all capital cases whose name was a legion. The reasons given by him make very entertaining reading : " If you imprison at home, the criminal is soon thrown upon you again, hardened in guilt. If you transport, you corrupt infant societies and sow the seeds of atrocious crimes over the habitable globe. There is no regenerating of felons in this life and for their own sake as well as for the sake of society, I think it is better to hang. " Happily for humanity milder views have since prevailed and it may be said to the credit of Loughborough, that those views appealed to him. He was one of those that supported the impeachement of Warren Hastings. His judgments as Chancellor are reported in 2, 3, 4 and 5 Vesey Junior. He was unfortunate in his reporter. It seems the reporter Vesey Junior, so called even when he was eighty to distinguish him from Vesey Senior, took down his notes in short-hand which is not calculated according to Lord Campbell, to make for good reporting. He was a dull man apparently unequal to the task of abridging and giving the spirit of any discourse. He succeeded much better with Sir William Grant whose judgments when delivered were perfect in thought and expression. Loughborough has not made any substantial contributions to the Equity Law, the most substantial contributions during the period being by Arden, Master of the Rolls, afterwards Lord Alvanely. He decided *Thellusson's case*—the leading case on accumulations. In *Graham* v. *Johnstone* he laid down the principle that the distribution of a man's personal estate after his death takes place according to the law of his domicile though the leading case on the same point is that of Arden in *Somerville* v. *Somerville* reported in 5 Ves. Senior at p. 749. The contemporary estimate of Lord Loughborough was not high. When Lord Ellenborough was dining at a Puisne Judge's having been long engaged with him in the drawing room, the lady of the house stepped up and said, " Come, my Lord, do give us some of your conversation—you have been talking of law long enough." " Madam, " said the Chief Justice, " I beg your pardon. We have not been talking law or anything like law, we have been talking of one of the decisions of Lord Loughborough. " He did his appeal work in the House of Lords satisfactorily. He was generally inclined to affirm, perhaps unconsciously influenced by the circumstance, as Lord Campbell remarks slyly, that he was not to give reasons in

that case. But he did reverse some particularly bad judgments coming from Scotland. The decisions of the House of Lords were neglected at the time. "It is a curious fact," says Lord Campbell, "that although there were now published regular periodical reports of the cases determined in all the Courts of Westminster Hall, the decisions of the Court of dernier resort were still neglected and it is wonderful to observe how little they have contributed to the formation of our Civil Code, whereas in most other countries the decisions of the Courts from which an appeal lies are rarely cited as authority."

Erskine was Lord Chancellor for a short period of 13 or 14 months (1806 February to 1807 April). His fame as an advocate is much greater than his fame as Judge. In fact, he was little equipped for the duties of the great office to which he was appointed. He was neither an equity lawyer nor for the matter of that a greater Common Law lawyer. He was a great *Nisi Prius* Pleader. He could not even say with Lord Holt, "I have been counsel in one equity suit which I lost.". His judgments are to be found in the 12th and 13th volumes of the reports of Vesey Junior. Little bad doctrine is to be found in them, but they lay down, it is said, few useful rules. Luckily for the public, the office of the Master of Rolls was occupied at the time by Grant who was a great Judge. His important decisions are *Mathewson* v. *Stockdale* (12 Ves. 270) dealing with copyright, *Sanders* v. *Pope* (relief against forfeiture) (12 Ves. 289) which, however, is much criticised), *White* v. *Wilson* (18 Ves. 69) and *Ex parte Crammer* (12 Ves. Jun. 445-457) dealing with insanity. An idea of as to how dense the reporter Vesey Junior must have been can be made out from his dealing with the last mentioned case. He takes the case to lay down as a point of law: "In case of lunacy, the notion that the moon has an influence is erroneous." The great boast of his Chancellorship was, however, his decision in *Thelluson* v. *Woodford* (1 Dow 249), wherein he enumerates the rules as to *election* in wills. He was the most famous advocate of his day, in fact one of the finest advocates of any time. Within five years of his being called to the bar, he was given silk and gave up circuit, appearing only on special retainers. It is said, he rarely failed, when he so appeared. He made a stand against Justice Buller in the interest of his client which has become famous. Erskine insisted upon the Judge recording the verdict of the jury as they said. Buller thought

that the jury were not clear and what they meant was different and would record it with an alteration. Buller, J. said : " I would not be interrupted." Erskine : " I stand here as an advocate of a brother citizen and I desire that the word only may be recorded." Buller, J.: " Sit down Sir, Remember your duty or I shall be obliged to proceed in another manner." Erskine : " Your Lordship may proceed in what manner you think fit. I know my duty as well as your Lordship knows yours. I shall not alter my conduct." The Judge was cowed. In the House of Lords he had the assistance of Lord Eldon and Lord Redesdale and did the work satisfatcorily as he generally deferred to their opinion.

Lord Eldon was Chancellor from 1801 to 1820. He engaged as a junior in a systematic course of reading the reports including that of a reporter of such low credit as Vernon. He could tell the names of most of the cases reported with the volume and the page where they were to be found. When he devoted himself to law he read little else. He made his fame as advocate in the case of *Akroyd* v. *Smithson* before Thurlow (Br. Ch. Cases Vol. I, page 503). His opinion contained so many ifs and buts and thoughs that the soliictors seldom laid cases before him while Kenyon giving direct answers was consulted and made lot of money. He was first made Chief Justice of the Common Pleas and held office for two years (1799-1800). His decisions in that capacity are reported in Bosanquet and Puller —they are generally on technical points. Lord Eldon began the practice of giving reasons on the certificate on points of law referred to the Court of Equity. Lord Kenyon dropped it on account of the carping criticism of Eldon. The range of his learning was limited. Though his knowledge of English Law was most profound, of the Roman Law and of the Continental jurists he had no knowledge. Hearing before Lord Eldon was interminable. He never complained of irrelevance. He rather encouraged prolixity and even an approach to absurdity he never checked by a rebuke, a sneer, a sarcasm or even a look of exhausted patience or of suppressed ridicule. He would hear the sixth counsel and the seventh. Sometimes, during argument, he would occupy himself in writing letters to his daughter and others. There was bitter complaint about the delay in Chancery and even then he would not move. A favourite plan adopted for calling his attention was to say, "I am about to enter upon a view of the case which may

perhaps be of consideration," when the Chancellor having laid aside his pen, would say, "That new view of the case does deserve and shall receive consideration." The heaviest charge brought against him was of delaying the delivery of judgment. Stories were invented of "one large cargo of ice having melted away and another cargo of fruit having become rotten while he was doubting what judgment he should pronounce on motions for an injunction. (13 Ves. 542.). On one occasion, after speaking about the merits of the case for two hours and indicted a strong opinion in favour of the defendant, he finished by saying, "However, I will take home the papers and read them carefully, and will tell the parties on a future day what my judgment shall be." It all came out of his desire to look to everything himself. "I know" said he, "it has been an opinion, a maxim, a principle—an honest principle on which several of those who have presided in this Court have acted that a Judge is obliged to know nothing more than what counsel thinks proper to communicate to him relative to the case. But for myself I have thought and acted otherwise; and I know, yes, I could swear upon my oath that if I had given judgment on such information and statements only as I have received from counsel on both sides, I should have disposed of numerous estates to persons who had no more title to them than I have. And believe me that I feel comfort in the thought—a comfort of which all the observations of my conduct can never rob me." (*See* also 6 Dow 16). So that attorneys were afraid that the old fellow would find out weak points even if the counsel on the other side did not bring it to the notice of the Court and used to advise compromise. It used to be said that Eldonian doubting might give a fair illustration of Eternity. In his judgment in *Radnor* v. *Shefts*, 11 Ves. Jur. 453 he says "having had doubts upon this will for 20 years, there can be no use in taking more time to consider it." There is a witty note by a reporter of his day's work:—

Mr. Leach
Made a speech
Angry, neat but wrong
Mr. Hart
On the other part
Was heavy, dull and long.
Mr. Parker
Made the case darker,

Which was dark enough without
Mr. Coke,
Cited his book
And the Chancellor, 'I doubt.' ".

He was a supporter of precedent; so he followed the course of decisions as to Court's interference in the case of bargain with expectant heirs. (2 Swan 162), execution of a trust by Court, 10 Ves, 342, and as to the power of married women with respect to property settled for separate use, 11 Ves. 321. He rebuked the Scotch Courts for expressing unwillingness to follow the judgment of the House of Lords in another case, 6 Dowl. 112. He ruled no fewer than 66 points on specific performance. He admirably illustrated the principles governing the rights of successive mortgages as affected by non-delivery of title-deeds. He simplided the doctrine of marshalling assets' 8 Ves. 382. He established the authority of the Court to interfere with the guardianship of an immoral parent, 2 Ruus. 1. He was more in the habit of doubting than of overruling but on occasions he did overrule. He laid down the principle that charity will not fail for want of a trustee, 10 Ves. 246. He accepted Plummer's view that limitation by adverse possession applied to equitable estates. When legal questions came, he referred to Common Law Judges. In one case he referred to King's Bench, and next to Common Pleas and on difference he gave his own opinion.. .. He developed the practice of issuing injunctions and appointing Receivers.

SUMMARY OF ENGLISH CASES.

LOWTHER *v.* CLIFFORD, (1926) 1 K. B. 185.

Lease—Covenant by lessee "to pay assessments, impositions and outgoings"—Expiry of lease—Holding over as tenant from year to year—Liability to pay paving expenses under Private Street Works Act, 1892.

There was a covenant in a lease for a term of seven years that the lessee should pay "all assessments, impositions and outgoings now payable or hereafter to become payable in respect of the premises except the landlord's property tax." After the expiry of the seven years' period the lessee held over as tenant from year to year on the same terms as before and during that period a sum was levied from the owner for paving expenses under the Private Street Works Act, 1892. The owner claimed the sum from the lessee under the covenant.

Held, the amount was an "imposition" or "outgoing" within the meaning of the covenant and was payable by the lessee though the original lease had expired and he had become a tenant from year to year.

CHAPLAIN *v.* SMITH, (1926) 1 K. B. 198.

Lease—Covenant not to give up possession to another—License to others to use, but possession retained—If amounts to a breach of covenant—Forfeiture.

A lease deed for 14 years contained a covenant that the lessee should not "assign or underlet or part with the possession or otherwise dispose of the premises or any part thereof" and there was also the usual clause for re-entry if there was a breach of any of the covenants. He transferred his business to a private Company of which he was the managing Director and the business of the Company was carried on in the premises but he kept the key himself and controlled the business. Later on a second Company was formed which took over the business of the first Company, but the original lessee was the managing Director and there was an express stipulation that he was to remain in possession, though the business of the Company was carried on there. The landlord claimed forfeiture on the ground that possession had been parted with in favour of the Companies and that it constituted a breach of the covenant. *Held*, by the Court of Appeal reversing the decision of *Shearman*, *J.*, that no interest in the premises had passed to either of the Companies and as the original lessee had not parted with possession, there was no breach of the covenant.

Per Bankes, L. J.—All that was conferred upon the Companies was a mere privilege or license to use a part of the demised premises. The lessee who retained possession did not commit a breach of the covenant by allowing other people to use the premises.

Per Warrington, L. J.—A man may obstain from parting with possession of premises though he allows another to use them and then he does not commit a breach of the covenant

Per Scrutton, L. J.—The mere act of letting other persons into possession by the tenant and permitting them to use it for their own purposes is not, so long as he retains the legal possession himself, a breach of the covenant.

LAURIE AND MOREWOOD *v.* DUDIN AND SONS, (1926) 1 K. B. 223 : 95 L. J. (K. B.) 191.

Sale of goods—Portion of stock of maize sold—Delivery

order for—Note sent to warehouseman—Title if passes—Estoppel—Sale of Goods Act, S. 16.

A person had 618 quarters of maize lying with the defendants who were warehousemen. He sold 200 quarters out of it to the plaintiff and gave him a delivery note, which was duly handed over to the defendants who noted it in their stock book. By the time the plaintiff asked for delivery, the owner as unpaid vendor directed his warehousemen not to give delivery and so the plaintiff sued the warehousemen in detinue. *Held*, by the Court of Appeal affirming the decision of Sankey, J., in (1925) 2 K B 383 (1) title to the goods did not pass to the plaintiff on the mere giving of the delivery note,as the goods had not been ascertained and separated out of the bulk; and (2) by taking possession of the delivery note and entering receipt of it in their stock book the defendants were not estopped from denying the title of the plaintiffs.

PROCTER GARRETT MARSTON, LTD. *v.* OAKWIN STEAMSHIP CO., LTD., (1926) 1 K. B. 244.

Shipping—Charterparty—Time fixed for waiting at Port of call for orders—Duty to wait a reasonable time after expiry of period.

Where a charterparty provides that a ship is to proceed to a port of call for orders regarding discharge of cargo and that within 24 hours of the receipt of intimation as to the arrival of the ship the charterer or his agent should give the necessary orders, and any further detention of the ship would be charged for, the shipowners are under a duty to wait for a reasonable time after the expiry of the 24 hours' notice. If the ship leaves the port immediately after the expiry of the twenty-four hours, it would amount to a breach of the conditions of the charterparty and the owners would be liable to the charterers in damages.

SUTTLE *v.* CRESWELL, (1926) 1 K B 264.

Betting—Football coupon in newspaper—Forecast of matches to be rewarded by prizes—Paper purchased only for the sake of coupon—If amounts to gaming.

A weekly newspaper priced at six pense was published by a person and it purported to give news of football, racing, etc. Each paper contained a coupon containing a list of ten forthcoming football matches and whoever forecasted correctly the results of all the ten matches or of nine of them got a money prize. The Court found that the purchasers bought the

paper not for the sake of the paper but for the coupon. *Held* it constituted a betting business.

HUTCHINSON *v.* KIVETON PARK COLLIERY, CO. LTD., (1926) 1 K B 279.

Workmen's Compensation Act—"Arising out of and in the course of employment"—Injury while at work—Cessation of incapacity—Same injury subsequently while at home—Contributing cause—Claim for compensation—If maintainable.

A workman while employed in his master's mine slipped down and injured his knee. He was incapacitated for a time during which he received compensation. He then rejoined duty and continued for a about a year and one day while at home he again slipped down and injured his knee at the same place as before causing the same trouble, *i. e.*, dislocation of the semi lunar cartilage. He claimed compensation for the period of his being incapacitated a second time. *Held,* the question is purely one of fact whether the second accident was the result of the first, in which case alone the employer would be liable. Doctrine of *novus actus intervenious* adverted to.

Per Pollock, M. R.—It is not conclusive against the workman that the injury should have taken place not upon the employer's premises or indeed arising out of circumstances immediately connected with the actual work which it would be his duty to perform.

Case law discussed.

CAVENDISH *v.* CAVENDISH, (1926) P. 10.

Divorce—Adultery—Subpoena duces tecum—Discovery tending to prove adultery—If can be ordered.

During the pendency of proceedings for divorce initiated by the wife on the ground of her husband's adultery with *X* and *Y*. She took out a *subpoena duces tecum* requiring him to produce his diaries, correspondence and cheque books. *Held,* it should not be granted as it was sought for no other purpose except to prove the husband guilty of adultery, and it was a well-established principle that no man should be asked to prove his own guilt or provide evidence in support thereof.

WALL *v.* EXCHANGE INVESTMENT CORPORATION, LTD., (1926) 1 Ch. 143.

Company—Vote by proxy—Objection disallowed by Chairman—Clause in the Articles of Association as to validity of—If can be reviewed by a Court of Law.

The Articles of Association of a Company provided that "no objection shall be made to the validity of any vote excepting at the meeting at which such vote shall be tendered or at the meeting (if any) to which such meeting shall be adjourned in the regular course of business, and every vote, whether given in person or by proxy, not disallowed at any one of such meetings, shall be deemed valid for all purposes whatsoever." The Chairman at a meeting of the shareholders in the *bona fide* exercise of his power disallowed an objection as to a vote by proxy. *Held*, by the Court of Appeal affirming the decision of Romer, J. that the Chairman's decision was final and could not be reviewed by a Court of Law, in the absence of any charge of fraud or such misconduct as in the case of an arbitrator would vitiate his award. (1899) 1 Ch. 550 followed.

In re LISTER : EX PARTE BRADFORD OVERSEERS AND BRADFORD CORPORATION, (1926) 1 Ch. 149.

Bankruptcy—Lease—Disclaimer of, after occupation by Official Receiver—Liability to pay rates—If "in respect of property disclaimed"—Bankruptcy Act, 1914, *S.* 54.

A bankrupt at the time of his adjudication was the occupier of a dwelling house under an oral lease. The trustee in insolvency entered on the premises and remained in possession for some time and thereafter disclaimed the tenancy. The rating authorities claimed from the trustee the amount due in respect of the period when he was in occupation. *Held*, by the Court of Appeal revising the decision of Lawrence, J. the personal liability from which he was discharged by reason of his disclaimer under S. 54 of the Bankruptcy Act, 1914 (corresponding to S. 62 of the Presidency Towns Insolvency Act in India), did not include the liability to pay the rates and hence he was personally liable to pay the same; and the notice of disclaimer did not operate to determine such liability in respect of the full amount claimed.

In re WETHERED: *Ex parte* SALAMAN, (1926) 1 Ch. 167.

Bankruptcy—Reputed ownership—Judgment debt—Course of business—Agreement to pay in instalments—Valuable consideration—Bankruptcy Act, 1914, *Ss.* 38 (*c*) *and* 45.

A owed two debts to *B*, in respect of one of which a judgment was obtained. *B* assigned both these as security with a third party *C*; who agreed not to inform the debtor of the assignment. Thereafter *B* was adjudged insolvent. The

solicitor of *B* and *C* made arrangements with *A* for payment of the two debts in instalments, the judgment debt to be paid after the other debt was cleared, but at that time none of the parties knew of *B's* financial condition. At the time of the vesting of *B's* estate in the Official Trustee, a portion of the non-judgment debt had been paid off, and the moneys credited to *C*. The Trustee moved for a declaration that the debts payable by *A* formed the property of the bankrupt and were divisible among the creditors. *Held,* (1) the judgment debt, which had arisen in the course of the bankrupt's business was divisible among his creditors and its character had not in any way been changed merely because it had become a judgment-debt; and (2) as regards the other debt, *C* had obtained a good equitable charge, and as it was entered into prior to the bankruptcy for valuable consideration the trustee was not entitled to the same.

WAIMIHA SAWMILLING CO. *v*. WAIONE TIMBER CO., 95 L. J. P. C. 5.

Registration—Effect of—Unregistered interest—Knowledge that right was being asserted in a litigation—Dealing with land pending litigation—If amounts to fraud.

Under the Land Transfer Act of New Zealand the registered proprietor of land in the absence of fraud holds the same freed from all encumbrances except such as are registered; and it was also provided in the Act that mere knowledge of the existence of an unregistered right would not amount to fraud. The proprietor knowing of the existence of an unregistered interest, and that the same was being asserted in a pending litigation transferred the land. *Held,* he was entitled to do so and his conduct was not fraudulent.

JOTTINGS AND CUTTINGS.

The General Medical Council.—We have read with much interest in The Lancet of the 6th inst. a Memorandum as to the Constitution, Functions, and Procedure of the General Medical Council by the Registrar of the Council. He points out that, according to the short preamble to the Medical Act, 1858, the object of the establishment of the General Medical Council and of the Medical Registrar was to serve the interest of the public: "Whereas it is expedient that persons requiring medical aid should be enabled to distinguish qualified from unqualified practitioners." But while S. 32 of the Act prevents an

unregistered practitioner from recovering any fees at law, no penalty is imposed on unregistered practice. "The public" says the Registrar, "were left free then, as they are now, to seek 'medical aid' from the unqualified practitioner if they like." But this immunity for unqualified practitioners is not universal in other countries. "In other countries, and in other parts of the King's Dominions, the restriction of practice to the qualified is with general consent and approval enforced by law," and unqualified persons who practice for gain are liable to severe penalties. In the Osteopathy debate in the House of Commons on the 9th inst., Dr. Graham Little said that, with the exception of England and Germany, and five of the Australian states, practically all the countries of the civilised world penalised unqualified practice. Mr. Chamberlain, the Minister of Health, did not hold out any prospect of a change of the law in this respect, and referred to the growth of education and the general intelligence of the people as a protection against unqualified kinds of treatment.

—*The Law Journal,* Feb. 20, 1926, p. 164.

"Infamous Conduct."—In the controversy that has arisen with regard to the constitution and jurisdiction of the Medical Council, some prejudice appears to have been aroused against thr Council by the use of the expression "infavour conduct in any professional respetc," in S. 29 of the Medical Act, 1858, as a ground for erasing the name of the accused from the register. The words are unfortunate, but in *Dr. Allinson's case* (1894, 1 Q. B., p. 763), the Court of Appeal agreed upon an explanatory formula, which we may shorten inti conduct "reasonably regarded as disgraceful or dishonourable by his professional—brethren of good repute and competency." There is no corresponding statutory ground for striking a solicitor off the Roll, nor is it necessary, for this is done in pursuance of the jurisdiction of the Court— now transferred to the Discipline Committee—over its own officers. But in *Re a Solicitor* (1912, 1 K. B. 302; 81 L. J., K. B. 245), the Divisional Court adopted the formula in *Dr. Allinson's Case* as equally applying to a solicitor. The Registrar of the General Medical Council, in the Memorandum referred to above, gives a full account of the procedure of the Council in adjudicating upon cases before it, and it is shown that it endeavours to act on strict judicial lines. This, however, may in practice be difficult where a Court is composed of so many members, and we are left wondering what was the offence for which

Dr. Axham's name was erased. Sir Herbert Barker's practice was not forbidden by the law, and there was no question of "covering," for he practised openly on his own account, with results which were known to be beneficial, and which could not be obtained by ordinary means. Any true analogy between doctors and lawyers is rendered impossible by the difference of the laws—the one, natural; the other, positive—with which they are concerned.

Deconsecration of Consecrated Buildings:—Some months ago, when a Presbyterian member of the House of Commons desired to have his child baptized in the Crypt Chapel, permission was refused on the ground that the Chapel was a building consecrated according to the rites of the Church of England. The member in question, being dissatisfied, took the matter up with the Government, and it was announced, shortly before the recess, that the Government was advised that the building had become deconsecrated, and that it was available for use by members of Parliament of all denominations for baptisms or marriages, subject to the authority and control of the Lord Great Chamberlain. The Church of England authorities have not accepted this reasonable view, and it is understood that the matter will shortly come before the Judicial Committee of the Privy Council for decision, and that, in the meantime, those members of the House of Commons who are members of the Church of England are deprived of the use of the Chapel, since the clergy of that denomination will not be licensed to officiate in what is at the moment, *ex hypothesi*, an unconsecrated building. The view of the Law Officers is, we gather, that the Crypt Chapel, having been used, under statutory authority, for purposes unconnected with religion, it has become an unconsecrated building. The use suggested would reconsecrate it in a wider sense, and we hope some Lord Westbury on the Judicial Committee will prevent the narrow view being taken.

—*The Law Journal*, Feb. 20, 1926, p. 165.

BOOK REVIEWS.

REPORTS OF INCOME-TAX CASES, by Mr. P. R. Srinivasan, Vol. I, 1926, Price Rs. 10.

The reports of tax cases in England have furnished a model for the book under review. With the increasing power of the High Courts in deciding questions under the Income-tax

Acts, the necessity of a publication like this has been largely felt by the assessee, the lawyer and the Income-tax department wherein they may find collected in one place all the cases under the Income-tax law without having to wade through the pages of innumerable law reports official and non-official. In some cases the decisions have not even been reported and there is therefore felt greater difficulty in getting at those judgments. In India as well as in England case under the Income-tax Act are becoming so numerous as to call for a special publication like the one under notice. The editor has collected in this volume all the decisions under the Income-tax Act of 1886, 1918 and 1922 together with all the decisions on the Excess Profits Duty Act that have a bearing on questions arising under the Income-tax Act. The editor also proposes to publish supplementary volumes of the reports of cases to be decided on the subject hereafter. By bringing out this work the editor has laid not merely the Indian lawyers under a deep debt of gratitude but the entire body of assessees, and the Income-tax authorities themselves. The index at the end of the work gives self-contained statements of law and not merely references to the body of the work. The utility of the work has been considerably enhanced by the decisions of Chief Courts of Mysore and Travancore under their Income-tax legislations being incorporated in it. The strongest point in favour of this work, to our mind, is that it has won the approbation of the present Chief Justice of Madras who, it is well-known, is strongly opposed to all indiscriminate and bad reporting of cases. We should not fail to draw attention to the excellant printing and neat get up of the work.

INDIAN COMPANY MANUAL by Sen Gupta and Sen Gupta.

The names of Nares Chandra Sen Gupta, Advocate, Calcutta High Court, sometime Professor of Law and Dean of the faculty of Law, Dacca University and of H. S. Sen Gupta sometime Branch Manager of the Co-operative Hindustan Bank, Ltd. The Bank of Dacca, Ltd., and Accountant of the Dacca Ayurvediya Pharmacy, Ltd., are sufficient to ensure to the readers of the book its usefulness from a business-man's point of view to secretaries, directors, promoters, and other persons connected with Companies as well as lawyers. The book is out of the common run of legal treatises which, however useful they may be to lawyers are unintelligible to the lay reader. A book of this kind which may be studied profitably by the layman and lawyer alike on the subject of the

Company law is one to be greatly welcomed. The book is not overburdened with case law but does not omit references to the more important cases. The work is not intended for the specialists who are referred to standard works on the subject. Although the Indian Companies Act is largely based on the English Companies Consolidation Act of 1908, there are some differences between the two enactments which are likely to be overlooked and the authors one of whom is a great lawyer and the other a business-man have clearly pointed out those differences so that there may be no overlooking them. The every day difficulties of the officers of Companies are met and practical suggestions of value are given. We have no doubt that the excellences of the work will be duly appreciated by lawyers and business-men. We cannot omit to refer to the excellent get up and printing of the work by the well known firm of M. C. Sarkar and Sons.

THE CIVIL PROCEDURE CODE, by M. C. Sarkar, 6th edition, 1925 by Mr. P. C. Sarkar. Messrs. Butterworth and Co., Ltd., Calcutta.

In this edition the entire work has been revised and re-arranged and some portions of the work have been re-written. The cases have been brought up-to-date since the publication of the last edition in 1921. The distinctive feature of Sarkar's Code of Civil Procedure is that decisions reported in the various private Law Journals in the different provinces have been noticed and the conflict of decisions wherever it exists has been clearly pointed out. Although a treatise on any subject is not expected to give references to all cases but only to decisions of importance, in a country like India where there are seven chartered High Courts, not to speak of Chief Courts and Judicial Commissioners' Courts exercising co-ordinate jurisdiction without the decisions of one Court having binding authority over others, a work like the one which gives reference to the various decisions of the several superior Courts and pointing out the conflicting decisions is likely to be of greater use for the practising lawyer throughout the country than one which merely gives a few leading decisions. Again, on the subject of procedure, where there are not always general principles of law guiding Courts as in the case of substantive law, it is useful to have references to a large number of cases. We have, therefore, no doubt that the volume under review which fully satisfies the requirements of all practising lawyers will be highly valued by them in their daily use.

PLEADINGS IN INDIA WITH PRECEDENTS by Mr. Justice Walsh and Dr. Weir. Published by Ram Narain Lal, Booksellers and Publishers, Allahabad. Price Rs. 5.

This small work which has been framed on the lines of Bullen and Leake's well-known work of Pleadings in England, has appeared none too soon and Profession has to be thankful to its learned authors for bringing it out. As has been observed by the Chief justice of the Allahabad High Court in his introduction to the work, the art of Drafting Pleadings is not often well understood in this country and a work like the one under review is bound to put a beginner in the way of drafting correct Pleadings. Instances are by no means rare when after a case has passed through several stages it is found in the High Court that necessary allegations have not been made and amendments are called for to bring out the real issues in the case.

Mr. Justice Walsh, as one of His Majesty's Judges who has every day come into contact with the Pleadings in this country, and Dr. Weir, Professor of Law in the University of Allahabad are persons who by their practical and theoritical acquaintence of the subject have made the book of real value to all lawyers. The first 165 pages of this book deal with principles and rules of Procedure which have to be understood before a correct Pleading can be drafted. Then follow the model Pleadings as suited to a large variety of cases. The set of Pleadings appended to the Civil Procedure Code though valuable in themselves are somewhat inadequate in their variety; and even as they are, we are not sure, they are utilised as much as they ought to be. The present work with all its suggestions in the matter of Practice and Procedure, will be found of great use, and the work will, we feel sure, find its place in the library of every lawyer.

[END OF VOLUME L.]